

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 790

INTRODUCER: Health Care Committee

SUBJECT: Certificates of Need/Nursing Homes

DATE: January 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HE	Fav/CS
2.			HA	
3.				
4.				
5.				
6.				

I. Summary:

This bill extends the moratorium on the approval of certificates of need for additional community nursing home beds until July 1, 2011. The bill provides an exception to the moratorium in nursing homes with a 96-percent occupancy rate and a record of providing good quality care in a planning subdistrict where the occupancy rate is 94 percent or above.

This bill allows a nursing home located in a county where a long-term care community diversion pilot project or an integrated, fixed-payment delivery system for Medicaid recipients over the age of 60 has been implemented to request a reduction in its annual Medicaid patient days that is a condition of its certificate of need until June 30, 2011. The Agency for Health Care Administration (AHCA or agency) is required to automatically grant the request if the reduction is no more than 15 percent of the nursing home's annual condition. A nursing home may make only one request every two years and must make such request in writing 60 days in advance of making a reduction. The changed certificate-of-need condition must be changed in the record and acknowledged in writing by the agency.

This bill amends s. 651.1185, F.S., transfers that section, and renumbers it as s. 408.0435, F.S., and amends s. 408.040, F.S.

II. Present Situation:

The Moratorium on Certificates of Need for Nursing Home Beds

The 2001 Legislature imposed a moratorium on the approval of certificates of need (CONs) for additional community nursing home beds until July 1, 2006. The moratorium does not apply to sheltered nursing home beds in a continuing care retirement community. The moratorium is

found in s. 651.1185, F.S. The purpose of this moratorium is to slow the increase of nursing home placements and to encourage other forms of assistance to elderly individuals who need assistance. Limiting the number of nursing home beds limits the state's obligation to fund nursing home bed days for Medicaid recipients, thereby freeing state funds to pay for other types of noninstitutional community support for the elderly. If the 2006 Legislature does not extend the moratorium on CONs for nursing homes, the moratorium will expire on July 1, 2006.

Certificate-of-Need Review for Nursing Home Beds

The CON regulatory process under ch. 408, F.S., requires that before specified health care services and facilities may be offered to the public they must be approved by AHCA. The establishment of a new nursing home or the addition of beds in a community nursing home is subject to CON review, which includes determination of the level of need that exists for such services in a geographical area known as a planning district. These CON reviews are not currently being conducted for nursing homes and nursing home beds because of the moratorium.

Requirements for CON Review for Nursing Home Beds

Section 408.036, F.S., specifies those health care projects that are subject to full comparative review in batching cycles by AHCA, those that can undergo an expedited review, and those that may be exempt from full comparative review upon request. The nursing home projects addressed in s. 408.036, F.S., are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes (*AHCA does not accept applications for additional community nursing home beds under this provision because of the moratorium.*)
- Constructing or establishing new health care facilities, which include skilled nursing facilities (*AHCA does not accept applications for new nursing homes under this provision because of the moratorium.*)

Projects Subject to Expedited Review

- Replacement of a nursing home within the same district
- Relocation of a portion of a nursing home's licensed beds to a facility in the same district

Exemptions from CON Review

- Addition of beds at a facility that is part of a retirement community which was established for 65 years prior to 1994 (*AHCA does not accept applications for additional nursing home beds under this provision because of the moratorium.*)
- State veterans nursing homes if 50 percent of the construction is federally funded
- Combining in one nursing home the beds or services authorized by two or more CONs in the same subdistrict

- Dividing into two or more nursing homes the beds or services licensed under one CON issued in the same planning subdistrict
- Adding 10 nursing home beds or 10 percent of the number of licensed beds (or for a Gold Seal facility 20 beds or 10 percent of the licensed beds) if:
 - The nursing home had no class I or class II deficiencies in the 30 months preceding the application
 - The occupancy rate for the previous 12 months was 96 percent or above
 - All beds previously authorized under this exemption have been operational for at least 12 months
 (AHCA does not accept applications for additional nursing home beds under this provision because of the moratorium.)
- Replacement of a nursing home on the same site or within 3 miles of the site provided the number of beds does not increase
- Consolidation or combination of nursing homes or transfer of beds within the same subdistrict by providers that operate multiple homes in the subdistrict provided there is no increase in the total number of beds in the subdistrict.

The expedited reviews and exemptions provided in s. 408.036, F.S., have given nursing homes the flexibility to relocate nursing home beds during the years the moratorium has been in effect.

Nursing Home Bed Need Methodology

Under s. 408.032(5), F.S., the state is divided into 11 planning districts, and under rule 59C-2.200, F.A.C., the planning districts are further divided into subdistricts. Rule 59C-1.036, F.A.C., establishes the CON review procedures for nursing facility beds. An application for nursing facility beds will not be approved in the absence, or insufficiency of, a numeric need, unless the absence or insufficiency of numeric need is outweighed by other information presented in a CON application showing special circumstances consistent with review criteria under s. 408.035, F.S. The planning horizon for applications is 3 years subsequent to the year the application is submitted. The estimate of projected population is the estimate for the planning horizon.

The need formula for nursing facility beds is based on the expected increase in the planning district's population age 65 to 74 and age 75 and over, with the age group 75 and over given 6 times more weight in projecting the population increase. The projected district bed need total is then allocated to its subdistricts consistent with the current subdistrict distribution of the total. The result for a given subdistrict is adjusted to reflect the current subdistrict occupancy of licensed beds and a desired standard of 94 percent occupancy. This subdistrict total of allocated beds is then reduced by the current number of nursing home beds in the subdistrict that are licensed or approved, resulting in the net need for additional nursing facility beds. If the current occupancy of licensed beds is less than 85 percent, the net need in the subdistrict is zero regardless of whether the formula otherwise would show a net need.¹

¹ The formula for determining the net need in a subdistrict for nursing home beds is as follows:

1. $A = (POPA \times BA) + (POPB \times BB)$

where:

A is the projected age-adjusted total number of nursing facility beds to be licensed under Chapter 400, F.S., at the planning horizon for the district in which the subdistrict is located.

The Need for New Nursing Home Beds

The statewide occupancy rate for nursing homes was 88.63 percent for the first half of 2004 and it was 87.62 percent for the second half of that year². For the planning horizon January 2008, four areas of the state have a nursing home occupancy rate above 94 percent, as follows:

Leon County	96.97%
Columbia/Hamilton/Suwannee Counties	96.78%
Nassau/N. Duval Counties	94.70%
Seminole County	94.44%

The number of beds required to address the need in these four areas will be:

Leon County	68 beds
Columbia/Hamilton/Suwannee Counties	70 beds
Nassau/N. Duval Counties	30 beds
Seminole County	111 beds

POPA is the projected population age 65-74 years in the district.

POPB is the projected population age 75 years and older in the district.

BA is the estimated current bed rate for facilities licensed under Chapter 400, F.S., for the population age 65-74 years in the district.

BB is the estimated current bed rate for facilities licensed under Chapter 400, F.S., for the population age 75 years and over in the district.

$$2. BA = LB / (POPC + (6 \times POPD))$$

where:

LB is the number of nursing facility beds licensed under Chapter 400, F.S., in the district as of January 1, for fixed bed need pools published between January 1 and June 30, or as of July 1 for fixed bed need pools published between July 1 and December 31.

POPC is the current population age 65-74 years in the district.

POPD is the current population age 75 years and over in the district.

$$3. BB = 6 \times BA$$

$$4. SA = A \times (LBD/LB) \times (OR/.94)$$

where:

SA is the subdistrict allocation of community nursing facility beds to be licensed under Chapter 400, F.S., at the planning horizon.

LBD is the number of nursing facility beds licensed under Chapter 400, F.S., in the subdistrict as of January 1, for fixed bed need pools published between January 1 and June 30, or as of July 1 for fixed bed need pools published between July 1 and December 31.

OR is the average 6 month occupancy rate for nursing facility beds licensed in the subdistrict

.94 equals the desired average 6 month occupancy rate for licensed nursing home beds in the subdistrict.

5. The net bed need allocation for a subdistrict at the planning horizon is determined by subtracting the total number of licensed and approved beds for facilities licensed under Chapter 400, F.S., in the subdistrict from the bed allocation determined under subparagraphs (c)1. through (c)4. unless OR, as defined in subparagraph (c)4. is less than 85 percent, in which case the net bed need allocation is zero. The number of licensed beds that is subtracted from the bed need allocation shall be the number licensed under Chapter 400, F.S., as of the most recent published deadline for agency initial decisions prior to publication of the fixed bed need pool. The number of approved beds that is subtracted shall be the number for which the agency has issued a certificate of need, a letter stating the agency's intent to issue a certificate of need, a signed stipulated agreement, or a final order granting a certificate of need, as of the most recent published deadline for agency initial decisions prior to publication of the fixed bed need pool. (Rule 59C-1.036, F.A.C.)

² Florida Agency for Health Care Administration. 2005.

Senate Interim Project Report 2006-138

Senate Health Care Committee staff reviewed occupancy rates for nursing homes in Florida; consulted with representatives of the state's three nursing home industry associations concerning the effects of the moratorium on the providers they represent; and consulted with AHCA staff concerning nursing home quality indicators, occupancy rates, service for Medicaid recipients, and nursing home bed-need projections. The report found that, while there is not currently a need for nursing home beds in Florida, and the projected need is for 279 beds in 2008, there will be a need for many more beds as the elderly population increases. In 2003, Florida ranked 48th in the nation in the number of beds per 1,000 population age 65 and older. The report concluded that, if Florida is to continue a policy of closely coordinating the number of beds to the need for beds, the state must plan within the next 5 years for the increase in the elderly population.

The moratorium on approval of certificates of need for additional nursing home beds was enacted in s. 52 of ch. 2001-45, L.O.F.; this section was omitted from the statutes because it was a temporary provision that will expire in 2006. However, after s. 52 of ch. 2001-45, L.O.F., was amended by the 2004 Legislature, the Division of Statutory Revision codified s. 52 and the subsequent amendments to it at s. 651.1185, F.S., in a chapter that governs continuing care contracts. With the publication of the 2004 Florida Statutes, it became appropriate to cite s. 651.1185, F.S., as the law that imposes a moratorium on approval of certificates of need for additional nursing home beds. In reviewing the moratorium, committee staff found that the placement of the moratorium in ch. 651, F.S., amid statutes for continuing care contracts, rather than in ch. 408, F.S., which governs health care administration, including certificate-of-need review, made the moratorium difficult to find. The interim project report recommended that, if the moratorium is continued, s. 651.1185, F.S., should be moved to ch. 408, F.S.

The interim project report recommended amending the statute to extend the moratorium on the approval of certificates of need for additional nursing home beds until July 1, 2011. In order to ensure access to needed nursing home services, the report recommended an exception to the moratorium to allow a nursing home with a 96 percent or greater occupancy rate to add 10 beds or 10 percent of the number of licensed beds if the home had no class I or class II deficiencies in the past 30 months and the occupancy rate in the planning subdistrict was 94 percent or greater. This exception is the same policy as the exemption to CON review under s. 408.036(3)(j), F.S., which is not currently available to nursing homes because of the moratorium. If the Legislature enacts this recommendation, the moratorium would stay in effect for five more years, and AHCA would have the authority to grant an exception to the moratorium for nursing homes that provide a good quality of care and that are operating at what is essentially full capacity.

Nursing Home Diversion

It is the policy of the state to provide high quality care for the elderly in the least institutional setting possible. Under s. 430.705, F.S., the Long-Term Care Community Diversion Pilot Project (diversion project) was established in accordance with this policy. The diversion project was designed to target individuals who would otherwise require Medicaid nursing home placement and provide them with a comprehensive array of home and community-based services at a cost less than nursing home care. Currently, 49 counties are approved for the operation of diversion project services. However, 24 of these counties are without active providers. In January 2006, it

was reported that there were 6,318 enrollees in the diversion project and the goal is to continue adding new slots.

Two pilot areas have been designated under s. 409.912(5), F.S., to implement an integrated, fixed-payment delivery system for Medicaid recipients who are 60 years of age or older. One area is to provide voluntary participation and has been defined as Orange, Osceola, Seminole, and Brevard Counties. This area also currently has the diversion project operating. The other area is to mandate participation and has been defined as Escambia, Santa Rosa, Okaloosa, and Walton Counties. The statute required that the implementation be completed by December 1, 2005. However, due to the waiver process with the Federal government, the implementation date is now November 1, 2006, and will be in effect until October 31, 2008. This program allows the Medicaid funds for long-term care and all other Medicaid services to be paid to a managed care provider in one lump sum based on an assessment for an entire range of services.

Certificate-of-Need Conditions

A CON can be conditioned when it is issued. An applicant can use this as a bargaining chip by offering as a condition that if it receives the CON it will maintain a certain percent of its annual patient days for Medicaid recipients. The applicant also can make an assertion that it is capable of maintaining a certain level of Medicaid patient days on its application for the CON that will later become a condition. These assertions or conditions vary greatly depending on when the application was originally filed. In some eras the nursing home CON process was very competitive so the conditions were extremely high and in other eras the numbers were very low. Medicaid patient day CON conditions vary widely among facilities. Currently, there are 383 nursing home facilities that have Medicaid patient day conditions. This total does not include CON approved but not licensed facilities. The Medicaid conditions fall into the following categories: 15 facilities have a condition between 1-10 percent; 29 facilities have a condition between 11-20 percent; 50 facilities have a condition between 21-30 percent; 84 facilities have a condition between 31-40 percent, 64 facilities have a condition between 41-50 percent; 66 facilities have a condition between 51-60 percent; 52 facilities have a condition between 61-70 percent, 16 facilities have a condition between 71-80 percent; and 7 facilities have a condition between 81-90 percent.

The agency currently can receive an application from any facility at any time requesting a reduction or change in the level of annual Medicaid-patient-days under s. 408.040(1)(c), F.S. It is not unusual for AHCA to reduce a facility's condition more than 15 percent under some circumstances. When AHCA modifies conditions it will often push toward getting a facility in line with the averages of a planning sub-district. With the current state policy of keeping patients in the least institutional setting as possible and the time of the moratorium, there has been a decrease in nursing home usage as much as possible. The agency feels they cannot then be overly strict with the CON conditions as it would be counter productive to existing policy.

III. Effect of Proposed Changes:

This proposed bill would implement the recommendations of Senate Interim Project Report 2006-138.

Section 1. Amends s. 651.1185, F.S., transfers that section, and renumbers it as s. 408.0435, F.S. The moratorium on certificates of need for additional community nursing home beds is extended until July 1, 2011. The bill provides an exception to the moratorium. In a planning subdistrict where the nursing home occupancy rate is 94 percent or greater, a nursing home with a 96 percent or greater occupancy rate could add 10 beds or 10 percent of the number of licensed beds if the home had no class I or class II deficiencies in the past 30 months, and if any beds licensed before the exception was requested had been licensed and operational for at least 12 months. A nursing home may request additional beds under this exception as an exemption from full comparative review. Certain timeframes and monitoring processes apply to an exemption under this subsection.

Section 2. Amends s. 408.040, F.S., to allow nursing homes in counties with Medicaid diversion projects or integrated, fixed-payment delivery systems to request a reduction in their annual Medicaid patient-days condition. The agency is then required to automatically grant the request if the reduction is no more than 15 percent of the nursing home's annual Medicaid patient-days CON condition. A nursing home may make only one request every two years and must make such request in writing 60 days in advance of making a reduction. The changed CON condition must be changed in AHCA's records and acknowledged in writing by AHCA. This new provision expires June 30, 2011.

Section 3. Provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If nursing homes meet the criteria for the exception from the CON moratorium, they will be able to apply for an exemption from CON review for the addition of nursing home beds and thus will not incur the cost of a CON review.

C. Government Sector Impact:

The agency will incur the cost of reviewing applications for exemptions from full review under the limited exception to the moratorium.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
